MARSILIUS OF PADUA

circa 1275–1342

Marsilius, whose chief work is entitled *Defender of the Peace* (1324), was a Christian Aristotelian. But both his Christianity and his Aristotelianism differ profoundly from the beliefs of the most celebrated Christian Aristotelian, Thomas Aquinas. Marsilius lives as it were in another world than Thomas. In the whole *Defender* he refers to Thomas only once, but even then, when he claims to quote Thomas, he in fact quotes only the statement of another authoritative Christian writer which Thomas had inserted with that writer's name[1] in a compilation he had made. Thomas had accepted the traditional ecclesiastical polity of the Roman Church. Marsilius admits that the Christian priesthood is divinely established as distinct from the Christian laity, both being part of the Christian order; but he denies that the ecclesiastical hierarchy is divinely established. According to him all Christian priests are essentially equal in all respects as far as divine right is concerned. He also denies that any priest, even if he be bishop or pope, has by divine right any of the following powers: the power to command or to coerce; the power to decide whether and how coercion is to be exercised against apostates and heretics, be they subjects or princes; and the power to determine in a legally binding way what is orthodox and what is heretical. But we cannot go into Marsilius' doctrine of the Church although it was of the greatest political importance, especially during the Reformation, for that doctrine belongs to political theology rather than to political philosophy. By following this distinction, we do not distort Marsilius' teaching, for he himself distinguishes throughout his work the political teaching which is "demonstrated" by "human demonstration" from the political teaching which is revealed by God immediately or mediately and is

therefore accepted by simple faith as distinguished from reason.[2] This is not to deny that the principle of his doctrine regarding the Christian priesthood supplies the key to almost all the difficulties in which his work abounds, for that principle explains his only explicit deviation from the teaching of Aristotle.

As regards the principles of political philosophy, Marsilius presents himself as a strict follower of Aristotle, "the divine philosopher" or "the pagan sage."[3] He explicitly agrees with Aristotle regarding the purpose of the commonwealth: the commonwealth exists for the sake of the good life, and the good life consists in being engaged in the activity becoming a free man, *i.e.*, in the exercise of the virtues of the practical as well as of the speculative soul. While practical or civic felicity "seems to be" the end of human acts, in fact the activity of the metaphysician is more perfect than the activity of the prince who is the active or political man par excellence.[4] Marsilius explicitly agrees with Aristotle in regarding the purpose of the commonwealth as the ground for the other kinds of causes (material, formal, and moving) of the commonwealth and of its parts. He explicitly agrees with him in very many other points. He has only one reservation against Aristotle: Aristotle did not know one very grave disease of civil society, an "evil thing, the common enemy of the human race" which must be eradicated. This ignorance does not derogate from Aristotle's supreme wisdom. Aristotle did not know the "pestilence" in question because he could not know it, for it was the accidental consequence of a miracle and it could have been even less foreseen by the wisest man than the miracle itself. The miracle was the Christian revelation, and the grave disease arose from the claims, in no way supported by Scripture, of the Christian hierarchy—claims which culminate in the notion of papal plenitude of power. Marsilius declares that this is the only political disease with which he will deal, since the others have been properly dealt with by Aristotle.[5] One ought therefore not even to expect to find a complete presentation of political philosophy in the *Defender*. The work comes to sight as a kind of appendix to that part of Aristotle's *Politics* which may be said to deal with the diseases of civil society.

Yet Aristotle's unawareness of a single, if unusually grave, disease of civil society is only the reverse side of his fundamental error: he was a pagan. That error affects his political philosophy immediately only in one point, however, in the teaching regarding the priesthood. He did not know the true Christian priesthood but only the false pagan priesthoods. This does not mean that his teaching regarding the priesthood is entirely wrong. On the contrary, within political philosophy that teaching is in the main correct. He saw clearly that the priesthood

forms a necessary part of the commonwealth, even a noble part, but cannot be the ruling part: priests cannot have the power to rule or to judge. He also saw clearly that it cannot be left entirely to the individuals whether they become priests or not; the number as well as the qualifications of the priests, and in particular the admission of foreigners to priesthood in the commonwealth, is subject to the decision of the government of the commonwealth. The Christian revelation does not contradict this demonstrated teaching,[6] since revelation is indeed above reason but not against reason. Nor is this all. Aristotle did not indeed know the true ground of the priesthood which can only be divine revelation. But if not Aristotle, at any rate other philosophers (who, as philosophers, did not believe in another life) devised or accepted allegedly divine laws accompanied with sanctions in another life, because they held that such sanctions would induce the nonphilosophers to avoid the vices and to cultivate the virtues in this life. Christianity is a truly divine law and the Christian faith in punishments and rewards after death is the true faith; on the basis of the Christian faith one may then indeed say that the commonwealth is directed toward both this-worldly felicity and otherworldly bliss. But since the otherworldly end cannot be known or demonstrated, political philosophy must conceive of that end as a postulated means for promoting the this-worldly end. Besides, while Christianity is exclusively or chiefly concerned with the other life, it too makes men's fate in the other world dependent on how they lived in this world, and it too contends that the belief in punishments and rewards after death is also politically salutary.[7] The reasoning of the pagan philosophers is then true, and therefore may be said to form a part of the demonstrated political teaching. At any rate, that reasoning leads to the philosophic concept, accepted by Marsilius, of the "sect" as a society constituted by belief in a peculiar divine law or by a peculiar religion; that concept embraces equally all allegedly and all truly divine laws, for the truth of the true religion escapes philosophy as philosophy. This religiously neutral concept of the sect is an essential part of Marsilian political science, just as it had been of Alfarabi's political science.[8] It leads to the rational concept of the priesthood according to which the priests are essentially teachers and not rulers or judges: the essential function of the priests in any divine law is to teach a salutary doctrine concerning the afterlife or, more generally, to teach the divine law in which their society happens to believe. The priests are the only teachers who as teachers form a part of the commonwealth.[9] According to Aristotle's *Politics,* the priests form indeed one of the six parts of the commonwealth, but their function does not consist in teaching. Marsilius' deviation from Aristotle in this point is, however, not based on a mis-

understanding; he deviates from the letter rather than from the spirit of his master. By asserting that the priesthood is the only part of the commonwealth which is essentially dedicated to teaching, Marsilius draws our attention to the most important fact that, according to Aristotle, the philosophers, so far from being the ruling part of the best commonwealth, as they are according to Plato, are not even as such a part of any commonwealth, for the end of the commonwealth as commonwealth is not speculative perfection: cities and nations do not philosophize.

The fact that the pagan philosophers in general and Aristotle in particular elaborated the rational teaching regarding the priesthood does not mean that Aristotle's whole teaching on this subject is true. According to Aristotle, the action of the priest is less noble or perfect than the action of the ruler, but in "the law of the Christians," and only in that law, the action of the priest is the most perfect of all. According to Aristotle, only old men of the upper class ought to be priests, another point which is denied by Christianity. Finally, according to Aristotle, the priests are simply citizens, but, since the Christian priests ought to imitate Christ and hence to live in Evangelical poverty and humility, it would appear that they must not have anything to do with the things that are Caesar's.[10]

The diseases of the commonwealth which Aristotle had discussed endanger this or that kind of government or render good government impossible. But in Marsilius' opinion the disease with which the *Defender* is concerned renders any government impossible, for it destroys the unity of the government and of the legal order, or it brings about permanent anarchy since it consists in the belief that the Christian is subject in this world to two governments (the spiritual and the temporal) which are bound to conflict. That disease endangers not only the good life or the fruits of peace, for the sake of which the commonwealth exists, but mere life or mere peace which is merely the condition—although the necessary condition—for the realization of the true end of the commonwealth. From this we see how appropriate the title of Marsilius' work is: the work is a defender, not of faith, but of peace, and of nothing but peace—not, to repeat, because peace is the highest good or the only political good but because, being a tract for the time, the work is chiefly concerned with the disease of the time. This is the reason why Marsilius apparently lowers his sights. Thus he abstracts from the question concerning the best regime without in any way denying its importance: any regime is better than anarchy. Thus he is more concerned with mere law, with law as law, than with good laws or the best laws, and with mere government than with the best government.

Thus he is satisfied with mere consent as the criterion of legitimacy as distinguished from the level of consent. Aristotle had as it were provided against Marsilius' predicament. When Marsilius in effect says that the law as law need not be good or just whereas the perfect law must be just, he is in entire agreement with Aristotle's remark that a ruler is no less a ruler because he rules unjustly, or with the usage of Aristotle and indeed of common sense which entitles us to speak of bad or unjust laws; to say nothing of the fact that when Aristotle opposes slavery by nature to slavery by law, he certainly does not mean by law a just law. When Marsilius frequently or mostly abstracts from the fact that the commonwealth is ordered toward virtue, he acts in entire agreement with Aristotle's observation that almost all cities are not concerned with virtue—an observation which does not prevent Aristotle from calling those bad cities "cities."[11]

Marsilius' sole reservation against Aristotle was the immediate consequence of the fact that Aristotle was a pagan. It concerned political philosophy or the rational political teaching only accidentally. Still, according to Aristotle, the best polity is the rule of gentlemen who rule their city, a fairly small society, and are enabled to do so because they are men of wealth. How can such men be thought to be rulers in a Christian society where they would have to rule Christian priests and hence the Church? For in a Christian society the activity of the priest is more noble than that of the ruler. Furthermore, the Church is universal. Finally, the best men in Christendom, *i.e.*, the best Christians, must live in Evangelical poverty. This was the problem which Marsilius believed he had to solve and that he had solved.

The problem of how to reconcile the Aristotelian principle (the men dedicated to the most noble practical activity ought to rule in their own right) with the Christian principle (the activity of the priest is more noble than that of the gentleman) could seem to have been solved in the clearest and simplest manner by the doctrine of papal plenitude of power. Marsilius avoids that conclusion within the confines of political philosophy by teaching that in every commonwealth, the fundamental political authority is not the government or the ruling part but the human legislator, and that the human legislator is the people, the whole body of the citizens. To express this in the language of Rousseau, Marsilius asserts that the only legitimate sovereign is the people but that the sovereign is to be distinguished from the government. He thus succeeds in subordinating the Christian priests to the Christian laity, the Christian aristocracy to the Christian *populus* or *demos*. But in taking these steps he seems to deviate flagrantly from the teaching of his revered master who may be said to have identified the sovereign with the

government and, above all, to have preferred the sovereignty or government of the gentlemen (aristocracy) to the sovereignty or government of the people (democracy).

Marsilius does not dispose of the difficulty by accepting Aristotle's assertions according to which democracy or the rule of the vulgar is a bad regime, and the farmers, artisans and money-makers, who constitute the vulgar, are not in the strictest sense parts of the commonwealth. He rather increases the difficulty by ascribing to Aristotle himself the following teaching: the legislative power must be entirely in the hands of the whole citizen body; the government ought to be elected by the whole citizen body and ought to be responsible to it; the government must rule in strict adherence to the laws and if it transgresses a law it is liable to punishment by the whole citizen body. This teaching ascribed to Aristotle is much more democratic than Aristotle's authentic teaching: in the whole body of the citizens, as Marsilius understands it, the vulgar must play a very great, not to say a decisive role. The reasoning in favor of the vulgar by which Marsilius supports his teaching is indeed almost identical with the argument in favor of democracy which Aristotle had reported and considered in the course of his ascent from the defective regimes to aristocracy (or kingship). And Marsilius does not tire of explicitly quoting Aristotle in this context, although not without strange misinterpretations. Still stranger is his complete silence in this context about Aristotle's antidemocratic argument. He reports the antidemocratic argument but omits any reference to Aristotle. He quotes only one authority for the antipopulist position: the saying of the wise king Solomon according to which "the number of the fools is infinite." Marsilius had not quoted any biblical passage in his populist reasoning; he thus perplexes us for a moment by making us think that the Bible, or at any rate Solomon, might favor aristocracy. Yet he disposes of this possibility by suggesting that the sage meant perhaps by the fools the infidels who, however wise in the worldly sciences, are nevertheless absolutely foolish, since, according to Paul, the wisdom of this world is foolishness with God. For from this it follows that the faithful man, and hence all the more the faithful multitude, is truly wise and hence perfectly competent to make laws and to elect kings or magistrates.

There is at least one other remark of Marsilius which shows that his belief in the competence of the people at large originated in his concern, not with authority as such, but with authority in Christendom. He says in effect that the necessity of giving the multitude power to legislate and to elect officials is less evident than the necessity of entrusting the multitude with the power to elect priests and remove them from their priestly offices; for error in the election of a priest can lead to eternal

death and to very great harm in this life. That harm consists in the seduction of women during the secret conversations in the course of which they confess their sins to a priest. It is obvious that the simplest citizen, and surely therefore the faithful multitude, is as able to judge the trustworthiness of any individual priest in such matters as the most learned men could be; and the simple multitude might even be better informed in such respects than the learned. Marsilius also suggests that the whole body of all the faithful which is guided in its deliberations by the Holy Spirit, as distinguished from the whole body of citizens as mere citizens, is infallible.[12] By far the most important argument for popular government, however, is supplied by the example of the Church in its purest form, in which there were not yet Christian princes, and the Church consisted exclusively of priests and a multitude of such laymen as were subjects. Precisely in that epoch "Church" meant only the whole body of the faithful, and thus all Christians were ecclesiastics. Hence the traditional distinction between the people and the clergy must be radically revised in favor of the people. In accordance with the practice of the early Church, the election to all priestly offices belongs to the whole multitude of the faithful. This reasoning is not weakened but strengthened by the fact that in the very early Church the multitude was uncivilized and inexperienced: if even then the bishops were frequently elected by the multitude, this procedure is all the more appropriate after the faith has taken root in both subjects and princes.[13]

Let us return to the confines of political philosophy and consider Marsilius' doctrine of the human legislator somewhat more closely. He devotes two whole chapters out of fifty-two to the statement, the proofs, and the defense of that doctrine. He advances three proofs to which he adds a fourth, but that fourth proof is, as he says, hardly more than a summary of the first three. (1) The legislative power ought to belong to those from whom alone the best laws can emerge, but this is the whole citizen body; one reason is that no one harms himself knowingly and hence, we may add, when each thinks of his interest, no one's interest will be neglected or the interest of all will be duly provided for. (2) The legislative power ought to belong only to those who can best guarantee that the laws made will be observed, but this is the whole citizen body, for each citizen observes better a law, even if it is not good, "which he seems to have imposed on himself"; the reason for this is that every citizen not only is a free man, *i.e.*, not subject to a master, but desires to be a free man. We may note that this argument causes a difficulty which Marsilius never discussed regarding the God-given and hence not even apparently self-imposed law. (3) What can benefit and harm each, and hence all, ought to be known and heard by all so that

all and each can attain the benefit and repel the harm. The defense of the doctrine is stated in three arguments which are in the main taken from the populist reasoning reported by Aristotle. In the second of the latter group of arguments, Marsilius illustrates the danger of entrusting legislative power to a few or to one by referring to the oligarchic or tyrannical character of the canon law.[14] Marsilius' populist thesis thus appears to be derived from his anticlericalism.

Marsilius ascribes the fundamental political power, the power of the human legislator, not simply to the whole citizen body but to "the whole citizen body or its stronger or superior part." By the stronger or superior part he certainly does not mean the unqualified majority. The stronger or superior part, which as it were replaces the whole citizen body, must be understood in terms of both number and quality, so that the vulgar may not be entirely at the mercy of the better people nor the latter entirely at the mercy of the former. The arrangement sketched by Marsilius might be called a "polity"—a mean between oligarchy and democracy—were it not for the fact that "polity" is a form of government, while Marsilius speaks of the sovereign as distinguished from the government. Furthermore, whereas in a democracy, in Aristotle's sense, the common people participate fully in deliberation and jurisdiction, Marsilius reserves these functions for the government or the ruling part as distinguished from the whole citizen body or its stronger or superior part.[15] Above all, as Marsilius already discloses in the chapters explicitly devoted to the definition of the human legislator, the human legislator may delegate his legislative power to one or to several men. Marsilius thus allows the sovereignty of the people to remain entirely dormant. In the same breath in which he proclaims the transcendent virtue of everyone's actually participating in legislation, he dismisses that participation as irrelevant. One must go further and say that he retracts the very principle of popular sovereignty. He compares the position of the ruling part in the body politic to that of the heart in the human body: it is that part which molds the other parts of the body politic. But if this is so, the ruling part is not derivative from a pre-existing sovereign, the human legislator, or the people, *i.e.*, the whole which consists of all parts of the body politic in their proper proportion, but is rather the cause of the alleged sovereign. In accordance with this Marsilius compares the position of the ruling part in the commonwealth to that of the prime mover in the universe, *i.e.*, of the Aristotelian God who surely is not subject to laws made by the other parts of the universe. In a word, Marsilius returns to the Aristotelian view according to which the human legislator (the sovereign) is identical with the ruling part (the government) or according to which the stronger or superior part is iden-

tical with the ruling part; for in every stable political order, the ruling part, whether it consists of one man or a few or the many, is as a matter of course the stronger or superior part. Marsilius even explicitly identifies the ruler with the legislator, *e.g.*, by calling the Roman emperors legislators. He does not leave it at saying that the human legislator can give the ruler "plenitude of power." He goes so far as to say that the ruler owes his position to "the human legislator or any other human will": the ruler may owe his position to his own will.[16]

If the ruling part is the legislator it cannot be simply subject to the law. Even in a republic, where no individual is the legislator and hence somehow above the law, it is sometimes necessary for an individual magistrate to act illegally in order to save the republic, as Cicero did when quenching the Catilinian conspiracy. When Marsilius suggests that the ruler is subject only to the divine law, we must not forget that according to him the divine law is not as such knowable to human reason nor does it as such have coercive power in this world. Furthermore, if the ruling part (the government) is the legislator (the sovereign), the government is not subject to punishment in case of misconduct for the same reason for which the sovereign people in the populist hypothesis is not subject to punishment.[17] To sum up, in spite of its dogmatic tone, Marsilius' populist teaching proves to be, if in a different way, as provisional or as tentative as the democratic argument in Aristotle's *Politics*.

The characteristic of the *Defender of the Peace* viewed as a treatise of political philosophy is that it very emphatically sets forth and literally at the same time retracts the doctrine of popular sovereignty. What is the meaning of this striking contradiction concerning the very foundation of political society? What is the meaning of Marsilius' vacillation between populism and what one may call monarchic absolutism? One could say that he takes the side of the people when the people is understood in contradistinction to the clergy and to nothing else, and that he takes the side of the Roman emperors, ancient or medieval, against the popes. In other words, the contradiction disappears once one assumes, as some scholars have done, that the *Defender* is inspired by nothing but anticlericalism. He needed for his anticlerical argument a populist basis because he had to appeal from the accepted opinions regarding the Church to the New Testament. The New Testament, while giving strong support to the demand for submission to absolute monarchs or to despots, does not give support to Marsilius' suggestion that the secular Christian rulers alone as distinguished from the priests ought to rule

the Church in everything affecting men's fate in this world (punishment of heretics and apostates, excommunication, property, and so on); but the New Testament apparently gives some support to the view that decisions in such matters rest with the whole body of the faithful as distinguished from the priests alone. Marsilius' "whole body of the citizens" is merely the philosophic or rational counterpart of "the whole body of the faithful," and he needs such a counterpart in order to provide his anticlericalism with the broadest possible basis: both reason and revelation speak against the rule of priests. This explanation implies that the fundamental self-contradiction which is characteristic of the *Defender* is the conscious outcome of a conscious strategy. Both the explanation and its implication are defensible, yet they do not account for certain features of Marsilius' populist teaching or for the essential character of strategies like the one justly ascribed to Marsilius. They fail to account for the latter because it is not sufficient to conceive of Marsilius as a perhaps skillful but rather unscrupulous politician or advocate.

To find a way out of the difficulty, let us consider a Marsilian doctrine which is not affected by either political theology or antitheological preoccupations, his doctrine of monarchy or kingship. He says that kingship is "perhaps" the best form of government, but he makes it his business to discuss the question as to whether hereditary or elective monarchy is preferable. He devotes to this subject only one chapter, but that chapter is longer than the two chapters taken together which are apparently meant to establish popular sovereignty. He decides in favor of elective monarchy strictly understood, *i.e.*, of a monarchy in which each monarch, and not a monarch and his descendants, is elected. This decision might have recommended him to the pope but with greater likelihood to the German emperor, who was at that time engaged in a bitter fight with the pope and who soon became Marsilius' protector; it would not have recommended him to the French king, for instance.[18] Yet it was necessary for the success of his venture—the venture aiming at the eradication of papal plenitude of power and everything reminding of it—to obtain the good will of all secular princes. It can therefore be assumed that his preference for elective monarchy over hereditary monarchy belongs to his final or serious political teaching. He certainly never contradicts this preference as he contradicts the doctrine of popular sovereignty. His argument in favor of elective kingship can be reduced to a single consideration. The most important quality of the ruler is prudence, for the infinite variety of human affairs does not permit an adequate regulation by laws, and prudence does not come by inheritance. Prudence, *i.e.*, practical wisdom in contradistinction to mere cleverness, is not separable from moral virtue and vice versa. Prudence is also

and especially required for the making of good and just laws. While prudence is then of the utmost importance, it is rare; nature generated only a part of the human race apt for prudence, and still fewer men actualize that potentiality. The foregoing consideration does not imply that hereditary kingship is illegitimate; it merely means that hereditary kingship is as such inferior to elective kingship. Hereditary kingship may even be preferable to elective kingship in most countries at all times and in all countries at the beginning of their political life, when all men are still uncivilized. For in most countries at all times and in all countries at the beginning or in their decay, prudence is as it were at best the preserve of a single family and there are therefore no prudent electors. Elective kingship is superior to hereditary kingship because the former is suitable to a perfect and civilized commonwealth, whereas the latter is suitable to a still imperfect or irremediably uncivilized society.[19]

Now, this very consideration leads to the conclusion that to a perfect or civilized commonwealth the rule of a number of prudent men, *i.e.*, aristocracy, is still more suitable than even elective monarchy, for there is no reason why, if there exists in a commonwealth a number of prudent men, as will be the case in a perfect commonwealth, all except one should always be deprived of the highest honor; those unjustly deprived of their fair share in government would justly engage in sedition. Marsilius devotes a whole chapter to the proof that the indispensable unity of government is in no way impaired if the government consists of a number of men instead of one man. Not only hereditary kingship but kingship as such is proper only at times and in places where there is an extreme paucity of men who are fit to rule a commonwealth as, *e.g.*, perhaps in Rome at the end of the republic. Monarchy is the proper kind of government in the household rather than in the perfect civil society. That aristocracy as distinguished from kingship is possible only under the most favorable conditions, and hence very rarely, in no way contradicts the fact that it is the most natural regime. If the priests were as they ought to be, Marsilius argues, the general council of the Church could consist only of priests, for the most important requirement for participation in such an assembly is thorough knowledge of the divine law, *i.e.*, the highest form of wisdom; but the priests are not as they ought to be. This amounts to saying that in principle aristocracy or the rule of the wise is preferable; only because the Church is no longer an aristocracy but, as Marsilius never tires of repeating, is now an oligarchy, is it in need of correction by the best part of the laity; and the laity is, in the Church, the popular element. Within his populist argument Marsilius indicates that the devising and ex-

amining of the laws is the proper business of the prudent men; the other members of society are of little use in this matter and would only be disturbed in the performance of their necessary work if they were called upon to do more than to act as "formal" ratifiers. Such popular ratification of the laws would indeed seem to be desirable, since it is likely to make the populace more willing to obey the laws.[20]

Marsilius' very vacillation between populism and absolute monarchy may be said to point to aristocracy as the right mean between these two faulty extremes. What speaks in favor of the legislative power of absolute kings redounds also to the benefit of a sovereign-government which consists of the prudent men of a city each of whom owes his position to cooptation by his peers rather than to popular election; and what speaks in favor of the legislative power of "the stronger or superior part of the whole citizen body" redounds to the benefit of what is in truth the stronger or superior part in every city which is not either too young or small or else too old or large for political excellence, namely, the most prudent and virtuous citizens. Marsilius abstains from arguing in favor of kingship while he argues emphatically in favor of popular sovereignty: the regime which he favors is somewhat closer, not indeed to democracy but to the "polity" than to kingship. At the same time his populist argument points, through its glaring defects for instance, from the "polity" to an aristocracy which is acceptable to the populace not only because of the inherent qualities of a genuine aristocracy as the rule of the most prudent and virtuous citizens, but also because it respects the susceptibilities of the populace. Marsilius presented the argument for aristocracy in the most subdued form because that argument did not provide a sufficiently broad basis for the anticlerical policy which he regarded as by far the most urgent task for his age. In addition, the argument in favor of aristocracy would have redounded in the opinion of the majority of his contemporaries to the benefit of the clergy, for if political power is shown to belong by right to the wisest, it would seem to follow that it belongs less to those wise in human wisdom than to those wise in divine wisdom.

The strategy which Marsilius employed can then be explained by the political impossibility which amounted to a physical impossibility of airing the fundamental political issue. He could have an easy conscience in proceeding as he did because he was satisfied that a government of priests was impossible or undesirable. For according to him the New Testament not only does not authorize government by priests, especially in secular matters, but positively forbids it. In the Christian law, and only in the Christian law, the action of the

priest as priest is the most perfect of all. But this action requires a spirit and a way of life which are incompatible with rulership, for it requires contempt for the world and the utmost humility. Christ excluded himself and the apostles from worldly rule in every form. Paul forbade every priest to become entangled in any secular matter whatever, since no one can serve two masters. The New Testament recognizes in the strongest terms the duty of obedience to the human government "which beareth not the sword in vain," not so much for the defense of the fatherland as for executing wrath upon the evildoers, and the New Testament traces to sinful pride the view that bad rulers or masters may be disobeyed. Christian slaves are not permitted to demand that they be set free after six years' servitude as the Hebrew slaves are, for the Old Testament law in question acquires in Christianity a purely mystical meaning. Humility and contempt for the world can then go together perfectly with sincere obedience to worldly masters. Still, within the confines of political philosophy, Marsilius must put the accents somewhat differently than the highest Christian authorities had done. He almost goes so far as to defend the pagan rulers against the saying of Christ that they "lord it over" their subjects. According to Paul, only those that are "contemptible" in the Church, *i.e.*, those who possess wisdom in things which are not spiritual, ought to be judges in worldly matters. The demands of the Sermon on the Mount cannot be reconciled with the status and the duties of governors and their lay subjects.[21] The perfect Christian community was the community of Christ and the apostles in which there was community of goods; but that community was imperfect in other respects since it was meant to become universal and yet no provision was made for its unity in the future when it would have become a large society; it could become perfect only through the acts of Christian princes. One is tempted to express Marsilius' thought by saying that it was nature which perfected grace rather than grace which perfected nature. He even goes so far as to indicate that there is an opposition between human government and divine providence, the former rewarding in this world the just and the doers of good deeds and the latter inflicting suffering on them in this world.[22] Marsilius indicates the peculiarity of the Christian law by saying that belief in God's future judgment—*i.e.*, a belief which Christianity shares with all other religions—would induce the Christian priests not to defraud the poor, while belief in the Christian religion would induce the Christian priests to live in poverty. Evangelical poverty is indeed according to him the inevitable concomitant of radical con-

tempt for this world or of radical humility. Within the confines of human reason, however, wealth, just as honor, comes to sight as something good since it is required for the exercise of moral virtue. But according to the Christian teaching, voluntary poverty is so far required for perfection that those who do not live in voluntary poverty are bad Christians. In spite of this, Marsilius can complain that the popes did not show proper gratitude for having been raised by the Roman emperors from extreme poverty to abundance of temporal goods. He appears to assume that Christian morality and the worldly morality of the gentleman contradict one another or that revelation is not simply above reason but against reason. This may be one reason why he regarded the New Testament law as especially difficult to fulfill.[23]

Marsilius has sometimes been celebrated as a defender of religious freedom. Yet he does not go beyond raising the question as to whether it is permitted to coerce heretics or infidels, while stating in the same context that he does not wish to say that such coercion is inappropriate. He does deny that such coercion can be exercised in this world on the basis of divine law. For according to Marsilius, no divine law has as such any coercive power in this world unless by virtue of a human law which makes it a crime to transgress the divine law in question. In addition, according to the Christian divine law which of course condemns heresy and infidelity and buttresses that condemnation by the threat of punishment in the other life, a man who is coerced into belief is not truly a believer; besides, Christian priests have not been given by Christ any coercive power. In spite of this, the Christian human legislator, not as Christian but as human legislator, may use coercion against heretics and infidels in this world. This right can be illustrated by the following parallel. The Christian divine law forbids drunkenness but does not as such require that coercion be used in this world against drunkards, yet it does not forbid the human legislator to prohibit drunkenness under penalties in this world. Similarly, the human legislator may enforce religious sobriety, *i.e.*, orthodoxy. Whether or not he does so will depend on his judgment on heresy, for instance. He may be guided by the biblical comparison of heresy to fornication and hence permit heresy as he permits fornication, although fornication, too, is forbidden by the Christian divine law. Or he may be guided by the biblical comparison of heresy to leprosy and hence take coercive action against heretics in compliance with the advice of experts (the priests), just as he takes coercive action against lepers in compliance with the advice

of experts (the physicians). He may also be guided by the facts that the New Testament surely permits excommunication and that excommunication is bound to affect the excommunicated in this life.[24]

But apart from any theological consideration, *i.e.*, from any consideration peculiar to the Christian divine law, it is clear that if belief in divine judgment in the other world is conducive to virtuous conduct in this world, as even pagan philosophers admitted, it is not inappropriate for the human legislator to protect that belief and its corollaries by forbidding speech which may subvert that belief. This conclusion is not contradicted by Marsilius' teaching that human government is concerned only with "transeunt" as distinguished from "immanent" acts. According to that distinction (which may have been suggested to Marsilius by a passage in Isaac Israeli's *Book of Definitions*), those acts of our cognitive and appetitive powers are immanent which, like thoughts and desires, remain within the agent and are not performed by means of any of the locally moved members of the body, while the other acts of those powers are transeunt. In other words, human government is concerned only with acts the commission of which can be proved even if he who committed the act in question denies having committed it. From this it follows that speeches are transeunt acts. Since subversive speeches of the kind indicated may do harm to others and to the community as a whole, their prohibition clearly falls, according to Marsilius, within the jurisdiction of the human legislator.[25] Marsilius surely did not preach freedom from religion.

Any divine law would lose much of its value if everyone subject to it were free to understand its promises and threats as he pleases. The Christian divine law in particular, with its emphasis on faith as the necessary condition for eternal salvation, would have been given in vain, it would have been given for men's eternal perdition, if Christ had not provided that the one true meaning of his divine law is accessible to all Christians. The indispensable unity of faith is provided in a legally binding manner by the universal or catholic Church, *i.e.*, by the whole body of the faithful, in so far as it is the faithful human legislator who authorizes the general councils and gives their decisions coercive power. This provision causes no difficulty when there is a single human legislator of Christian faith whose jurisdiction extends over the whole world. Such a legislator was, according to an opinion adopted by Marsilius, the Roman people or derivatively the Roman emperor. Marsilius tries to preserve this dignity for the Roman emperors of his age. But he cannot conceal from himself or from his readers the fact that there existed in

his time a number of faithful human legislators who did not recognize a superior or who were independent of one another. There was then no longer a guarantee of the unity of faith except within the borders of individual independent realms or commonwealths. Hence Marsilius regards it as advisable that the various Christian sovereigns should agree in recognizing the bishop of Rome as "the universal pastor," but in his opinion they are not obliged to do so.[26]

Yet, as he points out, a universal pastor or universal bishop is less necessary than a universal prince, for a universal prince is obviously more capable of keeping the faithful in the unity of faith than a universal bishop could be. As a Christian Marsilius seems then to be compelled, given his premises, to demand that political society be universal strictly speaking—and not only in pretense, or by courtesy, as the Roman empire was even at the peak of its power—so that it can discharge its duties to the Christian faith. He seems to be compelled, that is, to abandon the very last trace of his doctrine of popular sovereignty or of the Aristotelian preference for aristocracy which that doctrine partly represents; for neither democracy nor aristocracy as understood by Marsilius and Aristotle is feasible in any but fairly small societies. Yet in spite or because of all this, Marsilius denies that a universal prince is necessary. For Scripture does not demand a universal secular empire. Still less does reason demand it: peace among men is sufficiently guaranteed—we may understand this to mean that peace is guaranteed in the only possible way—if there exists unity of government within the particular commonwealths or kingdoms. In his only thematic discussion of the question concerning the desirability of a "world state," Marsilius refuses to decide it. He alludes to the difficulties obstructing world government which are caused by distance and by the lack of communication between the various parts of the world, as well as by the differences of languages and the extreme differences of customs. He refers to the view according to which all these things which separate men might be due to a heavenly cause, *i.e.*, to nature which incites men, by means of these divisive things, to wars in order to prevent overpopulation. Marsilius makes it clear that, were it not for wars and epidemics, overpopulation would be inevitable if the human kind had no beginning and will have no end, *i.e.*, if there is "eternal generation" or if the visible universe is eternal.[27] The Aristotelian doctrine of the eternity of the visible universe is irreconcilable with the biblical doctrine of the creation of the world. The Aristotelian doctrine of eternal generation is irreconcilable with the biblical doctrine that there was "a first man," with a doctrine which is the premise of the biblical doctrines that our first

parents fell and that therefore man is in need of redemption. Marsilius does not declare that the Aristotelian doctrine is true. Nor does he declare that it is untrue because it contradicts the most fundamental and the most manifest doctrines of the Bible. The reader can therefore only guess whether Marsilius was a believer or an unbeliever until he considers Marsilius' discussion, presented in the thirty-eighth chapter of the *Defender* (II 19), of the question concerning the ground of the belief in the truth of the Bible.

Within the confines of political philosophy, Marsilius' tacit opposition to Thomas Aquinas shows itself most obviously in his teaching regarding natural law or natural right. Marsilius denies that there is a natural law properly so called. He presupposes that reason knows no other legislator than man and hence that all laws properly so called are human laws: reason is indeed capable of discerning what is honorable, what is just, and what is of advantage to society. But such insights are not as such laws. Besides, they are not accessible to all men and hence not admitted by all nations; for this reason they cannot be called natural. There are indeed certain rules regarding what is honorable or just which are admitted in all regions and are in addition enforced almost everywhere; these rules can therefore metaphorically be called natural rights. In spite of their being universally or generally admitted, they are not strictly speaking natural, for they are not dictated by right reason. What is universally admitted is not rational, and what is rational is not universally admitted. Among the rules which can metaphorically be called "natural rights" Marsilius mentions the rule that human offspring must be reared by the parents up to a certain time; he may have regarded this rule as not unqualifiedly rational since Aristotle had held that no deformed child should be reared. More generally, if wars are by nature necessary in order to prevent overpopulation, the distinction between just and unjust wars loses much of its force, and this grave qualification of the rules of justice cannot but impair the rationality of those rules of justice which are universally or generally admitted to obtain within the commonwealth. In other words, the universally admitted rules of right are not rational since there exists a natural necessity to transgress them or since man does not possess freedom of will to the extent to which both common opinion and the teaching of revelation assert it.[28]

One can understand Marsilius' denial of natural law best if one starts from the fact that he implicitly denies the existence of first principles of practical reason. The cognitive status of the first principles of action in Aristotle's *Ethics* is obscure. One way of removing this obscurity—the way preferred by Averroes and Dante—is to conceive of

the first principles of action and therefore also of politics as supplied by theoretical reason or natural science: it is natural science which makes clear what the end of man is. Let the end of man be the perfection of his mind, *i.e.*, the actual thought of the metaphysician as metaphysician. The individual human being who is capable of pursuing this end will then deliberate as to how, given his circumstances, he can reach this end. This deliberation—an act of practical reason—will in many points differ from individual to individual, but there are certain universal rules of conduct with which all men must comply who wish to become perfect as men of speculation. Those rules are, however, not universal strictly speaking since only a minority of men is by nature capable of the contemplative life. But there is also an end which all men are able to pursue; this is the perfection of their bodies. This lower or first perfection requires among other things security in and through political society. Here a profound ambiguity enters: political society is required, although in different ways, for the sake of both man's first and his ultimate (theoretical) perfection. However this may be, political society in its turn requires a variety of "parts" (farmers, artisans, moneyed men, soldiers, priests, governors, or judges) and a certain order of these parts. It requires for its well-being that the legislators and the governors or judges possess prudence and if not all at any rate some of the moral virtues, especially justice. In agreement with Aristotle's procedure in the *Politics,* Marsilius deduces the necessity of those virtues from the purpose of civil society, and the necessity of that purpose from the end or ends of man. That is to say, deviating from the procedure which Aristotle had followed in his *Ethics* for educative or practical reasons, Marsilius does not take those virtues as ultimates, as choiceworthy for their own sake. It is because Marsilius treats prudence and the moral virtues less as choiceworthy for their own sake than as subservient to the two natural ends indicated that his political science is more obviously and more emphatically "demonstrative" than Aristotle's political science.[29]

Marsilius says much less than Aristotle even in his *Politics* about the highest end which is natural to man. For the reasons indicated above he lowered his sights. His doctrine of the commonwealth is reminiscent of the suggestion in Plato's *Republic* according to which the city of pigs is the true city. His doctrine of the human law is reminiscent of Maimonides' suggestion according to which the human law serves no higher goal than the perfection of man's body, whereas the divine law brings about the perfection of both the body and the mind.[30] But Maimonides held that the divine law is essentially rational and not, as it is according to Thomas, suprarational. One may say that Marsilius

combines Maimonides' view of the human law with Thomas' view of the divine law and thus arrives, within the confines of political philosophy, at the conclusion that the only law properly so called is the human law which is directed toward the well-being of the body. Marsilius was driven to take this view to some extent by his anticlericalism. When antitheological passion induced a thinker to take the extreme step of questioning the supremacy of contemplation, political philosophy broke with the classical tradition, and especially with Aristotle, and took on an entirely new character. The thinker in question was Machiavelli.

NOTES

1. Marsilius of Padua, *The Defender of the Peace,* trans. with an introduction by Alan Gewirth (New York: Columbia University Press, 1956), II. 13.24 (= 169th paragraph of Dictio II).

2. *Ibid.,* I. 9.2.

3. *Ibid.,* I. 11.2 beginning and 16.15 end.

4. *Ibid.,* I. 4.1; 1.7; II. 30.4 end (cf. I. 6.9 first paragraph).

5. *Ibid.,* I. 1.3–5, 7; 19.3 and 8–13.

6. *Ibid.,* I. 5.1; 15.10; 19.12 end. II. 1.4; 8.9 toward the end; 30.5 (paragraph 2).

7. *Ibid.,* I. 4.3–4; 5.11; 10.3.

8. *Ibid.,* I. 5.2, 3, 13; 10.3. II. 8.4 end. (But cf. the derogatory meaning of "sect" in II. 16.17.) See above, p. 224.

9. *Ibid.,* I. 5.12; 19.4 (102, 22, ed. Previté-Orton) and 5 beginning. II. 6.10 end; 10.6; 20.13. Note that Marsilius does not quote Deut. 33:10.

10. *Ibid.,* I. 5.1, 13. II. 13–14; 24.1 end; 30.4 (paragraph 1 end).

11. *Ibid.,* I. 1.1; 8.4; 10.4–5; 15.1; 17. II. 4.5; 8.9; 28 end. *Politics* 1255^{b} 13–15; 1276^{a} 1–3; 1282^{b} 7–13; 1324^{b} 7–9; 1333^{b} 5ff. *EN* 1180^{a} 24–35.

12. *Defender,* I. 5.1, 13; 8.3; 11 (esp. 11.6); 12.3, 4; 13.1, 3, 4. II. 17.10–12; 21.3 and 9 end. *Politics* 1281^{a} 40ff. (esp. 1281^{b} 23–25).

13. *Defender,* II. 2.3; 15.8; 16.1 and 9 beginning; 17.5, 7–8, 10; 28.3, 17.

14. *Ibid.,* I. 12–13. II. 23.9, 13 beginning; 24.11; 26.19; 28.29.

15. *Ibid.,* I. 5.1, 7; 8.1; 12.4. II. 2.8; 4.8; 8.7.

16. *Ibid.,* I. 4.4 (13, 20); 8.5; 10.2; 12.3; 13 end; 14 heading and end; 15.5–6; 16.21; 17.9. II. 5.4 (149 bottom); 8.6; 21.2; 30.4 (485, 19–21—one of the two central paragraphs of the chapter). III. 2.13. *Defensor Minor,* chap. 3 beginning. *Politics* 1296^{b} 14–16.

17. *Defender,* I. 14.3; 15.4; 26.13. Cf. II. 3.15 and 30.6.

18. *Ibid.,* I. 9.5–7; 15.3 end; 16. II. 24.2.

19. *Ibid.,* I. 7.1; 9.4–7, 10; 11.3 (42, 14–15); 14.2–7, 10; 15.1; 16. 11–24 (esp. 16.17).

20. *Ibid.,* I. 2.2; 3.4; 9.10; 11.5 end; 12.2; 13.8; 14.9; 16.19, 21, 23; 17. II. 20.2 end and 13–14; cf. II. 3.15 with 30.6. Gewirth, *loc. cit.,* I, 254. The use of *regnum* suggested in I. 2 makes one expect a more monarchistic tendency than Marsilius actually has.

21. *Ibid.,* I. 10.3; 12.2. II. 4.13; 5.1–2, 4–5, 8 (paragraph 1); 9.10, 12; 11.2, 7; 28.24 (462, 9); 30.4 paragraph 1 end.

22. *Ibid.,* II. 4.6; 13.28; 17.7–8; 22.1 beginning, 15–16; 24.4; 27.2 (426 paragraph 2). Gewirth, *loc. cit.,* I, 81.

23. *Ibid.,* I. 6.3, 6; 15.21; 16. II. 11.4; 13.16, 23 end–24; 26.12 beginning.

24. *Ibid.,* I. 10.3–7. II. 5.6, 7 (154,

23–26 and 157, 28); 6.11–13; 8.8; 9.2–5; 10.3, 7, 9; 13.2 end.

25. *Ibid.,* I. 5.4, 7. II. 2.4 (3); 8.5; 9.11; 10.4, 9; 17.8 toward the end. Gewirth, *loc. cit.,* I, 284. See also above, pp. 174ff.

26. I. 19.10. II. 13.28; 17.2; 18.8 (paragraphs 1–2 and end); 19.1–3; 20.1–2; 21.11, 13; 22.6, 8, 10; 24.9, 12; 25.4–6, 9, 15–18; 28.27; 30.8. *Defensor Minor,* chaps 7 and 12.

27. *Defender,* I. 17.10. II. 28.15.

28. *Ibid.,* I. 10.3–7; 12.2–3; 14.4; 15.6 end; 19.13. II. 8.3; 12.7–8.

29. *Ibid.,* I. 6–9; 11.3; 14.2, 6–7. Dante, *De Monarchia,* I. 14.

30. *Republic* 372[e] 6–7; *Guide of the Perplexed,* II. 40 and III. 27.

READINGS

A. Marsilius of Padua. *The Defender of the Peace.* Trans. with an introduction by Alan Gewirth. New York: Harper-Torch Books, 1967. Discourse I, chaps. i–xiii; Discourse II, chap. xii, secs. 3–12.

B. Marsilius of Padua. *The Defender of the Peace.* Discourse I, chaps xiv–xix; Discourse II, chaps viii, xii, secs 1, 2, 13–33, and xix.